IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1681 OF 2007

Halcyon Lab (P) Limited .... Applicant

versus

Shamrock Industrial Co.Ltd.& ors.... Respondent.

Mr. S.S.Parab for applicant
Mr. D.M.Purandare i/b.Ms. Revati Mohite-Dere for respondents 1 to 4.
Ms. M.H. Mhatre APP for State.

CORAM; A.P. DESHPANDE, J.
DATED; 07TH DECEMBER, 2007

P.C.;

1. This is an application seeking special leave to file appeal against the order of acquittal passed by the trial court in a complaint filed under section 138 of N.I.Act. It is the case of the complainant that pursuant to a purchase order, it had supplied pharmaceutical material worth Rs. 47,63,250/- to the accused no.1 company of which the other accused persons are the directors and in consideration for supply of the material, a cheque for the said amount was issued which was dishonoured. Per contra the case of the accused before the trial court was that the accused company had earlier transactions with the complainant and the mode of payment has always been by opening of letter of credit in favour of the supplier and not by payment of cheque. According to the

accused, at the time of purchase of goods as letter of credit facility was not immediately available to secure the payment, a cheque was handed over and the same was by way of stop gap arrangement and by way of security till letter of credit was opened in favour of the complainant. Thus according to the accused there was no legally enforceable debt or liability when the cheque was issued. It has come on record that the accused did open the letter of credit initially for Rs. 38,56,000/- and the same was raised thereafter by an additional letter of credit for Rs. 6,99,000/-. In paragraph 11 of the judgment, the trial court has categorically held that the director of the complainant company specifically admitted that the impugned cheque was given by the accused with the understanding that the same would be returned to the accused on opening of letter of credit by the accused. The trial court has believed the case of the accused that the cheque in question was issued as a stop gap arrangement till the letter of credit was available and hence concluded that the issuance of cheque was not for legally enforceable debt of liability.

2. Perused the impugned judgment. The same does not call for any interference, as possible view of the matter has been taken by the trial court on appreciation of evidence on record. Even otherwise it

appears that in the instant case the dispute is predominately of civil nature in as much as the material supplied by the complainant for an export order procured by the accused was rejected by the purchaser in maxico on the ground of want of specifications. Hence Application is dismissed.

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